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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/678,352	10/03/2003	Carlos E. Collazo	OSTEONICS 3.0-466	1797
530	7590	07/13/2006	EXAMINER	
LERNER, DAVID, LITTENBERG, KRUMHOLZ & MENTLIK 600 SOUTH AVENUE WEST WESTFIELD, NJ 07090			WILLSE, DAVID H	
			ART UNIT	PAPER NUMBER
			3738	

DATE MAILED: 07/13/2006

Please find below and/or attached an Office communication concerning this application or proceeding.

<b>Office Action Summary</b>	<b>Application No.</b> 10/678,352	<b>Applicant(s)</b> COLLAZO, CARLOS E.	
	<b>Examiner</b> Dave Willse	<b>Art Unit</b> 3738	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

#### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

#### Status

- 1) ☒ Responsive to communication(s) filed on 21 April 2006.
- 2a) ☐ This action is **FINAL**.                      2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

#### Disposition of Claims

- 4) ☒ Claim(s) 1-31 is/are pending in the application.
- 4a) Of the above claim(s) 15-31 is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-14 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

#### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

#### Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All    b) ☐ Some \*    c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

\* See the attached detailed Office action for a list of the certified copies not received.

#### Attachment(s)

- |   |   |
|---|---|
| 1) <input checked="" type="checkbox"/> Notice of References Cited (PTO-892)   | 4) <input type="checkbox"/> Interview Summary (PTO-413)<br>Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948)  | 5) <input type="checkbox"/> Notice of Informal Patent Application (PTO-152)             |
| 3) <input checked="" type="checkbox"/> Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08)<br>Paper No(s)/Mail Date <u>10-3-03; 4-25-06</u> | 6) <input type="checkbox"/> Other: _____  |

Applicant's election of Group I in the reply filed on April 21, 2006, is acknowledged. Because applicant did not distinctly and specifically point out the supposed errors in the restriction requirement, the election has been treated as an election without traverse (MPEP § 818.03(a)).

The disclosure is objected to because of the following informalities: In claim 4, line 4, "of" should be deleted. Appropriate correction is required.

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

(e) the invention was described in (1) an application for patent, published under section 122(b), by another filed in the United States before the invention by the applicant for patent or (2) a patent granted on an application for patent by another filed in the United States before the invention by the applicant for patent, except that an international application filed under the treaty defined in section 351(a) shall have the effects for purposes of this subsection of an application filed in the United States only if the international application designated the United States and was published under Article 21(2) of such treaty in the English language.

Claims 1, 2, and 12-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Bloebaum, US 6,355,067 B1. Figures 19 and 20 illustrate first and second blocks **60** and **62** slidable with respect to each other so that the device is expandable in a longitudinal direction. Regarding claim 12: abstract, lines 4-8 and 11-13. The device is viewed as a trial augment in that it is *capable* of being used with both temporary and permanent bearing members **220** and also has utility in clinical trials.

Claims 1-6 and 13 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Sevrain, WO 01/89428 A2. The embodiment of Figures 2A-2E includes first and second blocks **30** and **32** slidable relative to one another and spring-biased to expand longitudinally (page 11, last full paragraph). Regarding claims 5 and 6, attention is directed to elements **38**, **40** and **42**.

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The device augments the function of the spinal disc (page 9, lines 2-3; paragraph bridging pages 11 and 12) and is capable of being used in trial procedures.

Claims 1-3, 5-11, and 13 are rejected under 35 U.S.C. 102(e) as being clearly anticipated by Freid et al., US 2004/0019353 A1. Figure 11, for example, depicts the positively recited elements of the instant claims. Regarding claim 3, in some cases the serrations are shaped to bias the augment **30** towards expansion (paragraphs **0098** and **0102**). Regarding claim 9, peripheral features of the augment **30** are *capable* of cooperating with complementary grooves in an orthopedic trial for engagement therewith, even though such was not the intent. Regarding claims 10 and 11, reference is made to the cross pin **120** and the longitudinal slot described in paragraph **0102**.

Claims 1, 2, and 12-14 are rejected under 35 U.S.C. 102(b) as being clearly anticipated by Gabriel, US 5,571,194: abstract; drawings; column 1, lines 40-43.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Dave Willse whose telephone number is 571-272-4762. If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Corrine McDermott, can be reached on 571-272-4754. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.



**Dave Willse**  
**Primary Examiner**  
**Art Unit 3738**